



General Assembly

February Session, 2010

Raised Bill No. 5425

LCO No. 1918

01918_____ED_

Referred to Committee on Education

Introduced by:
(ED)

AN ACT CONCERNING SPECIAL EDUCATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 10-76i of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) There shall be an Advisory Council for Special Education which
4 shall advise the General Assembly, State Board of Education and the
5 Commissioner of Education, and which shall engage in such other
6 activities as described in this section. [Said] On and after July 1, 2010,
7 the advisory council shall consist of the following members: (1) [Two]
8 Eight appointed by the Commissioner of Education, six of whom shall
9 be (A) the parents of children with disabilities, provided such children
10 are under the age of twenty-seven, or (B) individuals with disabilities,
11 one of whom shall be an official of the Department of Education and
12 one of whom shall be a [representative of an institution of higher
13 education in the state that prepares teacher and related services
14 personnel] state or local official responsible for carrying out activities
15 under Subtitle B of title VII of the McKinney-Vento Homeless
16 Assistance Act, 42 USC 11431 et seq., as amended from time to time; (2)

17 [two] one appointed by the Commissioner of Developmental Services
18 [, one of whom] who shall be an official of the department; [and one of
19 whom shall be a person with disabilities or a parent of such a person;
20 (3) two] (3) one appointed by the Commissioner of Children and
21 Families [, one of whom] who shall be an official of the department;
22 [and one of whom shall be a person with disabilities or a parent or
23 foster parent of such a person;] (4) one appointed by the Commissioner
24 of Correction who shall be an official of the department; (5) four who
25 are members of the General Assembly who shall serve as nonvoting
26 members of the advisory council, one appointed by the majority leader
27 of the House of Representatives, one appointed by the minority leader
28 of the House of Representatives, one appointed by the president pro
29 tempore of the Senate and one appointed by the minority leader of the
30 Senate; (6) [three] one appointed by the president pro tempore of the
31 Senate [, one of whom shall be a member of the Connecticut
32 Association of Boards of Education, one of whom shall be a member of
33 the Connecticut Speech-Language-Hearing Association and one of
34 whom shall be a person with disabilities or the parent of such a
35 person] who shall be a representative of an institution of higher
36 education in the state that prepares special education and related
37 services personnel; (7) [two] one appointed by the majority leader of
38 the Senate [one of whom shall be a person with disabilities or the
39 parent of such a person and one of whom shall be a regular education
40 teacher] who shall be a public school teacher; (8) [four] one appointed
41 by the minority leader of the Senate [, one of whom] who shall be a
42 representative of a vocational, community or business organization
43 concerned with the provision of transitional services to children with
44 disabilities; [, one of whom shall be a member of the Connecticut
45 Association of Private Special Education Facilities and two of whom
46 shall be persons with disabilities or the parents of such persons; (9)
47 three] (9) one appointed by the speaker of the House of
48 Representatives [, one of whom] who shall be a member of the
49 Connecticut [Association of School Administrators and] Council of
50 Special Education Administrators and who is a local education official;

51 [, one of whom shall be a person with disabilities or the parent of such
 52 a person and one of whom shall be a member of the literacy coalition
 53 and a person with disabilities or the parent of such a person; (10) two]
 54 (10) one appointed by the majority leader of the House of
 55 Representatives [, one of whom] who shall be [a person working in the
 56 field of special-education-related services and one of whom shall be a
 57 person with disabilities or the parent of such a person] a representative
 58 of charter schools; (11) [four] one appointed by the minority leader of
 59 the House of Representatives [, two of whom shall be persons with
 60 disabilities or the parents of such persons, one of whom shall be a
 61 member of the Connecticut Association of Pupil Personnel
 62 Administrators and an administrator of a program for children who
 63 require special education, and one of whom shall be a special
 64 education teacher; (12) eight] who shall be a member of the
 65 Connecticut Association of Private Special Education Facilities; (12)
 66 one appointed by the Chief Court Administrator of the Judicial
 67 Department who shall be an official of such department responsible for
 68 the provision of services to adjudicated children and youth; (13) seven
 69 appointed by the Governor, all of whom shall be [persons with
 70 disabilities or parents of such persons and one of whom shall also be
 71 associated with a charter school] (A) the parents of children with
 72 disabilities, provided such children are under the age of twenty-seven,
 73 or (B) individuals with disabilities; and [(13)] (14) such other members
 74 as required by the Individuals with Disabilities Education Act, 20 USC
 75 1400 et seq., as amended from time to time, appointed by the
 76 Commissioner of Education. Appointments made pursuant to the
 77 provisions of this section shall be representative of the ethnic and
 78 racial diversity of, and the types of disabilities found in, the state
 79 population. The terms of the [present] members of the council serving
 80 on the effective date of this section shall expire on June 30, [1998] 2010.
 81 Appointments shall be made to the council by July 1, [1998] 2010.
 82 Members shall serve two-year terms, except that members appointed
 83 pursuant to subdivisions (1) to [(4)] (3), inclusive, [and (12)] of this
 84 subsection whose terms commenced July 1, [1998] 2010, shall serve

85 three-year terms and the successors to such members appointed
86 pursuant to said subdivisions (1) to (3), inclusive, shall serve two-year
87 terms.

88 (b) [Said] The advisory council shall elect annually its own
89 chairperson and other officers as deemed necessary. The council shall
90 meet at least once during each calendar quarter and at such other times
91 as the chairperson deems necessary or upon the request of a majority
92 of members in office. The State Board of Education shall meet at least
93 annually with the council to review the state plan for the provision of
94 special education. A majority of the members in office, but not less
95 than ten, shall constitute a quorum. Any member who fails to attend
96 fifty per cent of all meetings held during any calendar year shall be
97 deemed to have resigned from office. The member appointed by the
98 Commissioner of Education who is an official of the department shall
99 meet with and act as secretary to the advisory council. Members of the
100 advisory council shall serve without compensation, but shall be
101 reimbursed for all reasonable expenses incurred in the performance of
102 their duties. The Department of Education shall provide secretarial
103 and administrative assistance to facilitate the activity of the advisory
104 council. The Department of Higher Education shall appoint a liaison
105 person to the advisory council.

106 (c) The advisory council shall: (1) Advise the Department of
107 Education of unmet needs in educating children with disabilities and
108 on the administration of the provisions of sections 10-94f to 10-94k,
109 inclusive; (2) review periodically the laws, regulations, standards and
110 guidelines pertaining to special education and recommend to the
111 General Assembly and the State Board of Education any changes
112 which it finds necessary; (3) comment on any new or revised
113 regulations, standards and guidelines proposed for issuance; (4)
114 participate with the State Board of Education in the development of
115 any state eligibility documents for provision of special education; (5)
116 comment publicly on any procedures necessary for distributing federal
117 funds received pursuant to the Individuals with Disabilities Education

118 Act, 20 USC 1400 et seq., as from time to time amended; (6) assist the
119 Department of Education in developing and reporting such data and
120 evaluations as may be conducted pursuant to the provisions of said
121 act; (7) report to the General Assembly not later than January fifteenth
122 in the odd-numbered years and not later than February fifteenth in the
123 even-numbered years, concerning recommendations for effecting
124 changes in the special education laws; and (8) perform any other
125 activity that is required by the Individuals with Disabilities Education
126 Act, 20 USC 1400, et seq., as from time to time amended.

127 Sec. 2. (NEW) (*Effective July 1, 2010*) (a) On and after July 1, 2012,
128 local and regional boards of education shall provide applied behavior
129 analysis services to those students with autism spectrum disorder
130 whose individualized education plan or plan pursuant to Section 504
131 of the Rehabilitation Act of 1973 requires such services. Such services
132 shall be provided by a person who is (1) subject to the provisions of
133 subsection (b) of this section, licensed by the Department of Public
134 Health or certified by the Department of Education and such services
135 are within the scope of practice of such license or certificate, or (2)
136 certified by the Behavior Analyst Certification Board as a behavior
137 analyst or assistant behavior analyst, provided such assistant behavior
138 analyst is working under the supervision of a certified behavior
139 analyst. For purposes of this section, "applied behavior analysis"
140 means the design, implementation and evaluation of environmental
141 modifications, using behavioral stimuli and consequences, including
142 the use of direct observation, measurement and functional analysis of
143 the relationship between the environment and behavior, to produce
144 socially significant improvement in human behavior.

145 (b) If the Commissioner of Education determines that there are
146 insufficient certified personnel available to provide applied behavior
147 analysis services in accordance with the provisions of subsection (a) of
148 this section, the commissioner may authorize the provision of such
149 services by persons who: (1) Hold a bachelor's degree in a related
150 field; (2) have completed (A) a minimum of nine credit hours of

151 coursework from a course sequence approved by the Behavior Analyst
152 Certification Board, or (B) coursework that meets the eligibility
153 requirement to sit for the board certified behavior analyst examination;
154 and (3) are supervised by a board certified behavior analyst.

155 (c) Nothing in this section shall be construed to require the
156 provision of applied behavior analysis services in an individualized
157 education plan or plan pursuant to Section 504 of the Rehabilitation
158 Act of 1973.

159 Sec. 3. Subdivision (1) of subsection (d) of section 10-76h of the
160 general statutes is repealed and the following is substituted in lieu
161 thereof (*Effective July 1, 2010*):

162 (d) (1) In making a determination as to the issues in dispute, the
163 hearing officer or board shall review the evidence presented in the
164 hearing with the burden of proof on the party requesting the hearing.
165 The hearing officer or board [shall have the authority (A) to] may (A)
166 confirm, modify, or reject the identification, evaluation or educational
167 placement of or the provision of a free appropriate public education to
168 the child or pupil, (B) [to] determine the appropriateness of an
169 educational placement where the parent or guardian of a child
170 requiring special education or the pupil if such pupil is an
171 emancipated minor or eighteen years of age or older, has placed the
172 child or pupil in a program other than that prescribed by the planning
173 and placement team, or (C) [to] prescribe alternate special educational
174 programs for the child or pupil. If the parent or guardian of such a
175 child who previously received special education and related services
176 from the district enrolls the child, or the pupil who previously received
177 special education and related services from the district enrolls in a
178 private elementary or secondary school without the consent of or
179 referral by the district, a hearing officer may, in accordance with the
180 Individuals with Disabilities Education Act, 20 USC 1400 et seq., as
181 amended from time to time, require the district to reimburse the
182 parents or the pupil for the cost of that enrollment if the hearing officer

183 finds that the district had not made a free appropriate public education
184 available to the child or pupil in a timely manner prior to that
185 enrollment. In the case where a parent or guardian, or pupil if such
186 pupil is an emancipated minor or is eighteen years of age or older, or a
187 surrogate parent appointed pursuant to section 10-94g, has refused
188 consent for initial evaluation or reevaluation, the hearing officer or
189 board may order an initial evaluation or reevaluation without the
190 consent of such parent, guardian, pupil or surrogate parent except that
191 if the parent, guardian, pupil or surrogate parent appeals such decision
192 pursuant to subdivision (4) of this subsection, the child or pupil may
193 not be evaluated or placed pending the disposition of the appeal. The
194 hearing officer or board shall inform the parent or guardian, or the
195 emancipated minor or pupil eighteen years of age or older, or the
196 surrogate parent appointed pursuant to section 10-94g, or the
197 Commissioner of Children and Families, as the case may be, and the
198 board of education of the school district or the unified school district of
199 the decision in writing and mail such decision not later than forty-five
200 days after the commencement of the hearing pursuant to the
201 Individuals with Disabilities Education Act, 20 USC 1400 et seq., as
202 amended from time to time, except that a hearing officer or board may
203 grant specific extensions of such forty-five-day period in order to
204 comply with the provisions of subsection (b) of this section. The
205 hearing officer may include in the decision a comment on the conduct
206 of the proceedings. The findings of fact, conclusions of law and
207 decision shall be written without personally identifiable information
208 concerning such child or pupil, so that such decisions may be available
209 for public inspections pursuant to sections 4-167 and 4-180a.

210 Sec. 4. Section 10-76d of the 2010 supplement to the general statutes
211 is repealed and the following is substituted in lieu thereof (*Effective July*
212 *1, 2010*):

213 (a) (1) In accordance with the regulations and procedures
214 established by the Commissioner of Education and approved by the
215 State Board of Education, each local or regional board of education

216 shall provide the professional services requisite to identification of
217 children requiring special education, identify each such child within its
218 jurisdiction, determine the eligibility of such children for special
219 education pursuant to sections 10-76a to 10-76h, inclusive, prescribe
220 appropriate educational programs for eligible children, maintain a
221 record thereof and make such reports as the commissioner may
222 require. No child may be required to obtain a prescription for a
223 substance covered by the Controlled Substances Act, 21 USC 801 et
224 seq., as amended from time to time, as a condition of attending school,
225 receiving an evaluation under section 10-76ff or receiving services
226 pursuant to sections 10-76a to 10-76h, inclusive, or the Individuals with
227 Disabilities Education Act, 20 USC 1400 et seq., as amended from time
228 to time.

229 (2) Any local or regional board of education, through the planning
230 and placement team established in accordance with regulations
231 adopted by the State Board of Education under this section, may
232 determine a child's Medicaid enrollment status. In determining
233 Medicaid enrollment status, the planning and placement team shall:
234 (A) Inquire of the parents or guardians of each such child whether the
235 child is enrolled in or may be eligible for Medicaid; and (B) if the child
236 may be eligible for Medicaid, request that the parent or guardian of the
237 child apply for Medicaid. For the purpose of determining Medicaid
238 rates for Medicaid eligible special education and related services based
239 on a representative cost sampling method, the board of education shall
240 make available documentation of the provision and costs of Medicaid
241 eligible special education and related services for any students
242 receiving such services, regardless of an individual student's Medicaid
243 enrollment status, to the Commissioner of Social Services or to the
244 commissioner's authorized agent at such time and in such manner as
245 prescribed. For the purpose of determining Medicaid rates for
246 Medicaid eligible special education and related services based on an
247 actual cost method, the local or regional board of education shall
248 submit documentation of the costs and utilization of Medicaid eligible
249 special education and related services for all students receiving such

250 services to the Commissioner of Social Services or to the
251 commissioner's authorized agent at such time and in such manner as
252 prescribed. The commissioner or such agent may use information
253 received from local or regional boards of education for the purposes of
254 (i) ascertaining students' Medicaid eligibility status, (ii) submitting
255 Medicaid claims, (iii) complying with state and federal audit
256 requirements and (iv) determining Medicaid rates for Medicaid
257 eligible special education and related services. No child shall be denied
258 special education and related services in the event the parent or
259 guardian refuses to apply for Medicaid.

260 (3) Beginning with the fiscal year ending June 30, 2004, the
261 Commissioner of Social Services shall make grant payments to local or
262 regional boards of education in amounts representing fifty per cent of
263 the federal portion of Medicaid claims processed for Medicaid eligible
264 special education and related services provided to Medicaid eligible
265 students in the school district. Beginning with the fiscal year ending
266 June 30, 2009, the commissioner shall exclude any enhanced federal
267 medical assistance percentages in calculating the federal portion of
268 such Medicaid claims processed. Such grant payments shall be made
269 on at least a quarterly basis and may represent estimates of amounts
270 due to local or regional boards of education. Any grant payments
271 made on an estimated basis, including payments made by the
272 Department of Education for the fiscal years prior to the fiscal year
273 ending June 30, 2000, shall be subsequently reconciled to grant
274 amounts due based upon filed and accepted Medicaid claims and
275 Medicaid rates. If, upon review, it is determined that a grant payment
276 or portion of a grant payment was made for ineligible or disallowed
277 Medicaid claims, the local or regional board of education shall
278 reimburse the Department of Social Services for any grant payment
279 amount received based upon ineligible or disallowed Medicaid claims.

280 (4) Pursuant to federal law, the Commissioner of Social Services, as
281 the state's Medicaid agent, shall determine rates for Medicaid eligible
282 special education and related services pursuant to subdivision (2) of

283 this subsection. The Commissioner of Social Services may request and
284 the Commissioner of Education and towns and regional school
285 districts shall provide information as may be necessary to set such
286 rates.

287 (5) Based on school district special education and related services
288 expenditures, the state's Medicaid agent shall report and certify to the
289 federal Medicaid authority the state match required by federal law to
290 obtain Medicaid reimbursement of eligible special education and
291 related services costs.

292 (6) Payments received pursuant to this section shall be paid to the
293 local or regional board of education which has incurred such costs in
294 addition to the funds appropriated by the town to such board for the
295 current fiscal year.

296 (7) The planning and placement team shall, in accordance with the
297 provisions of the Individuals With Disabilities Education Act, 20 USC
298 1400, et seq., as amended from time to time, develop and update
299 annually a statement of transition service needs for each child
300 requiring special education.

301 (8) (A) Each local and regional board of education shall notify the
302 parent or guardian of a child who requires or who may require special
303 education, a pupil if such pupil is an emancipated minor or eighteen
304 years of age or older who requires or who may require special
305 education or a surrogate parent appointed pursuant to section 10-94g,
306 in writing, at least five school days before such board proposes to, or
307 refuses to, initiate or change the child's or pupil's identification,
308 evaluation or educational placement or the provision of a free
309 appropriate public education to the child or pupil. Such parent,
310 guardian, pupil or surrogate parent shall be given at least five school
311 days' prior notice of any planning and placement team meeting
312 conducted for such child or pupil and shall have the right to be present
313 at and participate in and to have advisors of such person's own
314 choosing and at such person's own expense to be present at and to

315 participate in all portions of such meeting at which an educational
316 program for such child or pupil is developed, reviewed or revised.
317 Immediately upon the formal identification of any child as a child
318 requiring special education and at each planning and placement team
319 meeting for such child, the responsible local or regional board of
320 education shall inform the parent or guardian of such child or
321 surrogate parent or, in the case of a pupil who is an emancipated
322 minor or eighteen years of age or older, the pupil of the laws relating
323 to special education and the rights of such parent, guardian, surrogate
324 parent or pupil under such laws and the regulations adopted by the
325 State Board of Education relating to special education. If such parent,
326 guardian, surrogate parent or pupil does not attend a planning and
327 placement team meeting, the responsible local or regional board of
328 education shall mail such information to such person. Each board shall
329 have in effect at the beginning of each school year an educational
330 program for each child who has been identified as eligible for special
331 education.

332 (B) At each initial planning and placement team meeting for a child,
333 the responsible local or regional board of education shall inform the
334 parent, guardian, surrogate parent or pupil of the laws relating to
335 physical restraint and seclusion pursuant to chapter 814e and the
336 rights of such parent, guardian, surrogate parent or pupil under such
337 laws and the regulations adopted by the State Board of Education
338 relating to physical restraint and seclusion.

339 (9) Notwithstanding any provision of the general statutes, for
340 purposes of Medicaid reimbursement, when recommended by the
341 planning and placement team and specified on the individualized
342 education program, a service eligible for reimbursement under the
343 Medicaid program shall be deemed to be authorized by a practitioner
344 of the healing arts under 42 CFR 440.130, provided such service is
345 recommended by an appropriately licensed or certified individual and
346 is within the individual's scope of practice. Certain items of durable
347 medical equipment, recommended pursuant to the provisions of this

348 subdivision, may be subject to prior authorization requirements
349 established by the Commissioner of Social Services. Diagnostic and
350 evaluation services eligible for reimbursement under the Medicaid
351 program and recommended by the planning and placement team shall
352 also be deemed to be authorized by a practitioner of the healing arts
353 under 42 CFR 440.130 provided such services are recommended by an
354 appropriately licensed or certified individual and are within the
355 individual's scope of practice.

356 (10) The Commissioner of Social Services shall implement the
357 policies and procedures necessary for the purposes of this subsection
358 while in the process of adopting such policies and procedures in
359 regulation form, provided notice of intent to adopt the regulations is
360 published in the Connecticut Law Journal within twenty days of
361 implementing the policies and procedures. Such policies and
362 procedures shall be valid until the time final regulations are effective.

363 (b) In accordance with the regulations of the State Board of
364 Education, each local and regional board of education shall: (1)
365 Provide special education for school-age children requiring special
366 education who are described in subparagraph (A) of subdivision (5) of
367 section 10-76a. The obligation of the school district under this
368 subsection shall terminate when such child is graduated from high
369 school or reaches age twenty-one, whichever occurs first; and (2)
370 provide special education for children requiring special education who
371 are described in subparagraph (A) or (C) of subdivision (5) of section
372 10-76a. The State Board of Education shall define the criteria by which
373 each local or regional board of education shall determine whether a
374 given child is eligible for special education pursuant to this
375 subdivision, and such determination shall be made by the board of
376 education when requested by a parent or guardian, or upon referral by
377 a physician, clinic or social worker, provided the parent or guardian so
378 permits. To meet its obligations under this subdivision, each local or
379 regional board of education may, with the approval of the State Board
380 of Education, make agreements with any private school, agency or

381 institution to provide the necessary preschool special education
382 program, provided such private facility has an existing program which
383 adequately meets the special education needs, according to standards
384 established by the State Board of Education, of the preschool children
385 for whom such local or regional board of education is required to
386 provide such an education and provided such district does not have
387 such an existing program in its public schools. Such private school,
388 agency or institution may be a facility which has not been approved by
389 the Commissioner of Education for special education, provided such
390 private facility is approved by the commissioner as an independent
391 school or licensed by the Department of Public Health as a day care or
392 nursery facility or be both approved and licensed.

393 (c) Each local or regional board of education may provide special
394 education for children requiring it who are described by subparagraph
395 (B) of subdivision (5) of section 10-76a and for other exceptional
396 children for whom provision of special education is not required by
397 law.

398 (d) To meet its obligations under sections 10-76a to 10-76g, inclusive,
399 any local or regional board of education may make agreements with
400 another such board or subject to the consent of the parent or guardian
401 of any child affected thereby, make agreements with any private
402 school or with any public or private agency or institution, including a
403 group home to provide the necessary programs or services, but no
404 expenditures made pursuant to a contract with a private school,
405 agency or institution for such special education shall be paid under the
406 provisions of section 10-76g, unless (1) such contract includes a
407 description of the educational program and other treatment the child is
408 to receive, a statement of minimal goals and objectives which it is
409 anticipated such child will achieve and an estimated time schedule for
410 returning the child to the community or transferring such child to
411 another appropriate facility, (2) subject to the provisions of this
412 subsection, the educational needs of the child for whom such special
413 education is being provided cannot be met by public school

414 arrangements in the opinion of the commissioner who, before granting
415 approval of such contract for purposes of payment, shall consider such
416 factors as the particular needs of the child, the appropriateness and
417 efficacy of the program offered by such private school, agency or
418 institution, and the economic feasibility of comparable alternatives,
419 and (3) commencing with the 1987-1988 school year and for each
420 school year thereafter, each such private school, agency or institution
421 has been approved for special education by the Commissioner of
422 Education or by the appropriate agency for facilities located out of
423 state, except as provided in subsection (b) of this section.
424 Notwithstanding the provisions of subdivision (2) of this subsection or
425 any regulations adopted by the State Board of Education setting
426 placement priorities, placements pursuant to this section and
427 payments under section 10-76g may be made pursuant to such a
428 contract if the public arrangements are more costly than the private
429 school, institution or agency, provided the private school, institution or
430 agency meets the educational needs of the child and its program is
431 appropriate and efficacious. Notwithstanding the provisions of this
432 subsection to the contrary, nothing in this subsection shall (A) require
433 the removal of a child from a nonapproved facility if the child was
434 placed there prior to July 7, 1987, pursuant to the determination of a
435 planning and placement team that such a placement was appropriate
436 and such placement was approved by the Commissioner of Education,
437 or (B) prohibit the placement of a child at a nonapproved facility if a
438 planning and placement team determines prior to July 7, 1987, that the
439 child be placed in a nonapproved facility for the 1987-1988 school year.
440 Each child placed in a nonapproved facility as described in
441 subparagraphs (A) and (B) of subdivision (3) of this subsection may
442 continue at the facility provided the planning and placement team or
443 hearing officer appointed pursuant to section 10-76h determines that
444 the placement is appropriate. Expenditures incurred by any local or
445 regional board of education to maintain children in nonapproved
446 facilities as described in said subparagraphs (A) and (B) shall be paid
447 pursuant to the provisions of section 10-76g. Any local or regional

448 board of education may enter into a contract with the owners or
449 operators of any sheltered workshop or rehabilitation center for
450 provision of an education occupational training program for children
451 requiring special education who are at least sixteen years of age,
452 provided such workshop or institution shall have been approved by
453 the appropriate state agency. Whenever any child is identified by a
454 local or regional board of education as a child requiring special
455 education and said board of education determines that the
456 requirements for special education could be met by a program
457 provided within the district or by agreement with another board of
458 education except for the child's need for services other than
459 educational services such as medical, psychiatric or institutional care
460 or services, said board may meet its obligation to furnish special
461 education for such child by paying the reasonable cost of special
462 education instruction in a private school, hospital or other institution
463 provided said board or the commissioner concurs that placement in
464 such institution is necessary and proper and no state institution is
465 available to meet such child's needs.

466 (e) (1) Any local or regional board of education which provides
467 special education pursuant to any mandates in this section shall
468 provide transportation, to and from, but not beyond the curb of, the
469 residence of the child, unless otherwise agreed upon by the board and
470 the parent or guardian of the child, tuition, room and board and other
471 items necessary to the provision of such special education except for
472 children who are placed in a residential facility because they need
473 services other than educational services, in which case the financial
474 responsibility of the school district and payment to such district shall
475 be limited to the reasonable costs of special education instruction as
476 defined in the regulations of the State Board of Education. If a hearing
477 board, pursuant to subsection (d) of section 10-76h, rejects the
478 educational program prescribed by the local or regional board of
479 education and determines that a placement by a parent or guardian
480 was appropriate, the local or regional board of education shall
481 reimburse the parent or guardian for the reasonable costs incurred for

482 the provision of special education pursuant to this section from the
483 initiation of review procedures as provided by said section 10-76h.

484 (2) For purposes of this subdivision, "public agency" includes the
485 offices of a government of a federally recognized Native American
486 tribe. Notwithstanding any other provisions of the general statutes, for
487 the fiscal year ending June 30, 1987, and each fiscal year thereafter,
488 whenever a public agency, other than a local or regional board of
489 education, the State Board of Education or the Superior Court acting
490 pursuant to section 10-76h, places a child in a foster home, group
491 home, hospital, state institution, receiving home, custodial institution
492 or any other residential or day treatment facility, and such child
493 requires special education, the local or regional board of education
494 under whose jurisdiction the child would otherwise be attending
495 school or, if no such board can be identified, the local or regional board
496 of education of the town where the child is placed, shall provide the
497 requisite special education and related services to such child in
498 accordance with the provisions of this section. Within one business day
499 of such a placement by the Department of Children and Families or
500 offices of a government of a federally recognized Native American
501 tribe, said department or offices shall orally notify the local or regional
502 board of education responsible for providing special education and
503 related services to such child of such placement. The department or
504 offices shall provide written notification to such board of such
505 placement within two business days of the placement. Such local or
506 regional board of education shall convene a planning and placement
507 team meeting for such child within thirty days of the placement and
508 shall invite a representative of the Department of Children and
509 Families or offices of a government of a federally recognized Native
510 American tribe to participate in such meeting. (A) The local or regional
511 board of education under whose jurisdiction such child would
512 otherwise be attending school shall be financially responsible for the
513 reasonable costs of such special education and related services in an
514 amount equal to the lesser of one hundred per cent of the costs of such
515 education or the average per pupil educational costs of such board of

516 education for the prior fiscal year, determined in accordance with the
517 provisions of subsection (a) of section 10-76f. The State Board of
518 Education shall pay on a current basis, except as provided in
519 subdivision (3) of this subsection, any costs in excess of such local or
520 regional board's basic contributions paid by such board of education in
521 accordance with the provisions of this subdivision. (B) Whenever a
522 child is placed pursuant to this subdivision, on or after July 1, 1995, by
523 the Department of Children and Families and the local or regional
524 board of education under whose jurisdiction such child would
525 otherwise be attending school cannot be identified, the local or
526 regional board of education under whose jurisdiction the child
527 attended school or in whose district the child resided at the time of
528 removal from the home by said department shall be responsible for the
529 reasonable costs of special education and related services provided to
530 such child, for one calendar year or until the child is committed to the
531 state pursuant to section 46b-129 or 46b-140 or is returned to the child's
532 parent or guardian, whichever is earlier. If the child remains in such
533 placement beyond one calendar year the Department of Children and
534 Families shall be responsible for such costs. During the period the local
535 or regional board of education is responsible for the reasonable cost of
536 special education and related services pursuant to this subparagraph,
537 the board shall be responsible for such costs in an amount equal to the
538 lesser of one hundred per cent of the costs of such education and
539 related services or the average per pupil educational costs of such
540 board of education for the prior fiscal year, determined in accordance
541 with the provisions of subsection (a) of section 10-76f. The State Board
542 of Education shall pay on a current basis, except as provided in
543 subdivision (3) of this subsection, any costs in excess of such local or
544 regional board's basic contributions paid by such board of education in
545 accordance with the provisions of this subdivision. The costs for
546 services other than educational shall be paid by the state agency which
547 placed the child. The provisions of this subdivision shall not apply to
548 the school districts established within the Department of Children and
549 Families, pursuant to section 17a-37, the Department of Correction,

550 pursuant to section 18-99a, or the Department of Developmental
551 Services, pursuant to section 17a-240, provided in any case in which
552 special education is being provided at a private residential institution,
553 including the residential components of regional educational service
554 centers, to a child for whom no local or regional board of education
555 can be found responsible under subsection (b) of this section, Unified
556 School District #2 shall provide the special education and related
557 services and be financially responsible for the reasonable costs of such
558 special education instruction for such children. Notwithstanding the
559 provisions of this subdivision, for the fiscal years ending June 30, 2004,
560 to June 30, 2007, inclusive, and for the fiscal years ending June 30, 2010,
561 and June 30, 2011, the amount of the grants payable to local or regional
562 boards of education in accordance with this subdivision shall be
563 reduced proportionately if the total of such grants in such year exceeds
564 the amount appropriated for the purposes of this subdivision for such
565 year.

566 (3) Payment for children who require special education and who
567 reside on state-owned or leased property or in permanent family
568 residences as defined in section 17a-154, and who are not the
569 educational responsibility of the unified school districts established
570 pursuant to section 17a-37, section 17a-240 or section 18-99a, shall be
571 made in the following manner: The State Board of Education shall pay
572 to the school district which is responsible for providing instruction for
573 each such child pursuant to the provisions of this subsection one
574 hundred per cent of the reasonable costs of such instruction. In the
575 fiscal year following such payment, the State Board of Education shall
576 deduct from the special education grant due the local or regional board
577 of education under whose jurisdiction the child would otherwise be
578 attending school, where such board has been identified, the amount
579 for which such board would otherwise have been financially
580 responsible pursuant to the provisions of subdivision (2) of this
581 subsection. No such deduction shall be made for any school district
582 which is responsible for providing special education instruction for
583 children whose parents or legal guardians do not reside within such

584 district. The amount deducted shall be included as a net cost of special
585 education by the Department of Education for purposes of the state's
586 special education grant calculated pursuant to section 10-76g. A school
587 district otherwise eligible for reimbursement under the provisions of
588 this subdivision for the costs of education of a child residing in a
589 permanent family residence shall continue to be so eligible in the event
590 that a person providing foster care in such residence adopts the child.
591 Notwithstanding the provisions of this subdivision, for the fiscal years
592 ending June 30, 2004, and June 30, 2005, the amount of the grants
593 payable to local or regional boards of education in accordance with
594 this subdivision shall be reduced proportionately if the total of such
595 grants in such year exceeds the amount appropriated for the purposes
596 of this subdivision for such year.

597 (4) Notwithstanding any other provision of this section, the
598 Department of Mental Health and Addiction Services shall provide
599 regular education and special education and related services to eligible
600 residents in facilities operated by the department who are eighteen to
601 twenty-one years of age. In the case of a resident who requires special
602 education, the department shall provide the requisite identification
603 and evaluation of such resident in accordance with the provisions of
604 this section. The department shall be financially responsible for the
605 provision of educational services to eligible residents. The
606 Departments of Mental Health and Addiction Services, Children and
607 Families and Education shall develop and implement an interagency
608 agreement which specifies the role of each agency in ensuring the
609 provision of appropriate education services to eligible residents in
610 accordance with this section. The State Board of Education shall pay to
611 the Department of Mental Health and Addiction Services one hundred
612 per cent of the reasonable costs of such educational services provided
613 to eligible residents of such facilities. Payment shall be made by the
614 board as follows: Eighty-five per cent of the estimated cost in July and
615 the adjusted balance in May.

616 (5) Application for the grant to be paid by the state for costs in

617 excess of the local or regional board of education's basic contribution
618 shall be made by such board of education by filing with the State
619 Board of Education, in such manner as prescribed by the
620 Commissioner of Education, annually on or before December first a
621 statement of the cost of providing special education, as defined in
622 subdivision (2) of this subsection, for a child of the board placed by a
623 state agency in accordance with the provisions of said subdivision or,
624 where appropriate, a statement of the cost of providing educational
625 services other than special educational services pursuant to the
626 provisions of subsection (b) of section 10-253, provided a board of
627 education may submit, not later than March first, claims for additional
628 children or costs not included in the December filing. Payment by the
629 state for such excess costs shall be made to the local or regional board
630 of education as follows: Seventy-five per cent of the cost in February
631 and the balance in May. The amount due each town pursuant to the
632 provisions of this subsection and the amount due to each town as
633 tuition from other towns pursuant to this section shall be paid to the
634 treasurer of each town entitled to such aid, provided the treasurer shall
635 treat such grant or tuition received, or a portion of such grant or
636 tuition, which relates to special education expenditures incurred
637 pursuant to subdivisions (2) and (3) of this subsection in excess of such
638 board's budgeted estimate of such expenditures, as a reduction in
639 expenditures by crediting such expenditure account, rather than town
640 revenue. The state shall notify the local or regional board of education
641 when payments are made to the treasurer of the town pursuant to this
642 subdivision.

643 (f) No children placed out primarily for special education services
644 shall be placed in a private school, agency or institution outside of the
645 state, except when in the opinion of the Commissioner of Education it
646 is determined that: (1) No public or approved private facility which
647 can reasonably provide appropriate special education programs for
648 such children is available in the state; (2) no public or approved private
649 facility which can reasonably provide appropriate special education
650 programs for such children is available in the state and the out-of-state

651 placement is required for a period of time not to exceed two years,
652 during which time the local or regional board of education responsible
653 for providing such children with a special education shall develop an
654 appropriate special education program or cause such program to be
655 developed within the state; or (3) an out-of-state placement is more
656 economically feasible than an existing special education program in
657 the state or any such program that could be developed within the state
658 within a reasonable period of time. No placement in an out-of-state
659 private special education school, agency or facility shall be approved
660 unless such school, agency or facility first agrees in writing to submit
661 to the state Department of Education any such financial program and
662 student progress reports as the commissioner may require for the
663 purpose of making an annual determination as to the economic
664 feasibility and program adequacy of the special education program
665 provided. The provisions of this subsection shall not apply to children
666 placed out primarily for services other than educational services as
667 described in subsection (d) of this section.

668 (g) (1) Each local or regional board of education shall review
669 annually and make a report as to the progress of each child for whom
670 such board is obligated to provide a special education and who
671 receives special education services in any private school, agency or
672 institution and shall, upon request of the commissioner, submit such
673 reports to the State Board of Education.

674 (2) Whenever a local or regional board of education determines that
675 a child who has for three years received special education services in
676 private facilities pursuant to subsection (d) of section 10-76d must
677 receive such services from private facilities for an additional period of
678 time, the State Board of Education, shall annually thereafter review the
679 progress of such child prior to approving or disapproving for purposes
680 of reimbursement, pursuant to subsection (d) of section 10-76d, any
681 continuation of private placement, considering such factors as the
682 educational and other needs of the child.

683 (h) For any school year commencing on and after July 1, 2010, if a
 684 child who has received special education and related services transfers
 685 from one school district to another school district after October first,
 686 the local or regional board of education under whose jurisdiction such
 687 child attended school or in whose district the child resided prior to
 688 such transfer and that provided special education pursuant to the
 689 provisions of sections 10-76a to 10-76g, inclusive, shall be financially
 690 responsible for the reasonable cost of special education and related
 691 services provided to such child until June thirtieth of the school year of
 692 such transfer. Such local or regional board of education shall be
 693 eligible for reimbursement of such special education costs pursuant to
 694 section 10-76g for such child. If a child transfers from one school
 695 district to another school district after October first, and such child was
 696 not receiving special education and related services prior to such
 697 transfer but the local or regional board of education of the school
 698 district to which such child has transferred determines that such child
 699 requires special education and related services, such school district
 700 shall be financially responsible for the reasonable cost of special
 701 education and related services provided to such child.

702 [(h)] (i) The provisions of this section and sections 10-76a, 10-76b,
 703 10-76c, 10-76f and 10-76g shall not be construed to relieve any insurer
 704 or provider of health or welfare benefits from paying any otherwise
 705 valid claim.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	10-76i
Sec. 2	<i>July 1, 2010</i>	New section
Sec. 3	<i>July 1, 2010</i>	10-76h(d)(1)
Sec. 4	<i>July 1, 2010</i>	10-76d

Statement of Purpose:

To reconstitute the State Advisory Council for Special Education by reducing the number of members to make it consistent with federal law; to require boards of education to provide applied behavior

analysis services to certain special education students; to establish that the burden of proof lies with the party requesting a special education hearing; and to require the school district from which a child transfers to pay for such child's special education costs for the remainder of the school year.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]